

The Columbian

Tuesday, June 11, 2002

Washington State Legal Aid Program Challenge Reaches U.S. High Court

PAUL QUEARY, Associated Press writer

OLYMPIA -- The U.S. Supreme Court agreed Monday to hear a Washington case challenging the widespread practice of pooling client money held by lawyers and using the interest to pay for legal services for the poor.

A Washington Supreme Court rule issued in 1984 requires lawyers to put clients' money in a pooled account if the amount is too small or will be held for too short a time to earn interest for the individual client.

The rule was later expanded to include real estate closing offers.

The interest from the pooled money adds up to about \$6 million per year statewide. It goes to the Legal Foundation of Washington, which doles it out to 34 legal aid agencies around the state.

The Washington Legal Foundation a Washington, D.C., organization that defends private property rights sued in federal court in 1997 to overturn the practice. The foundation argues the practice essentially steals the interest from the clients, an illegal taking of personal property under the Fifth Amendment to the U.S. Constitution.

"No one person suffers an awful lot," said Richard Samp, the foundation's chief counsel. "But it's a small amount of money that's stolen from a lot of people."

Similar programs called IOLTA, or Interest on Lawyers' Trust Accounts exist in all 50 states so the case could have broad impact.

Advocates argue that the program is an important source of legal help for poor people forced to deal with civil legal matters including domestic violence protection orders, child custody fights and eviction disputes.

"We only can help right now about one out of five people who ask for help," said Barbara Clark, executive director of the Legal Foundation of Washington. "The potential loss of this funding is very devastating."

IOLTA contributes 38 percent of the money available for low-income civil legal assistance in Washington, Clark said.

Advocates also argue that interest is essentially created by the program because taxes and accounting costs would eat away the money if lawyers tried to set up a similar program to benefit the clients.

But Samp argues that IOLTA programs essentially discourage lawyers from setting up such pooled accounts that might benefit their clients.

A U.S. District Court initially dismissed the Washington case, but a three-judge panel of the 9th U.S. Circuit Court of Appeals overturned the ruling. Then the full 9th Circuit overruled its own justices in the state's favor, agreeing with the state's contention that the clients weren't harmed because the interest wouldn't be earned otherwise.